THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

W.P. No.18451 OF 2005

DATE: 23-08-2005

Between:

M/s. Friends Transport Contractors,

Rep. by its Managing Partner K. Vidhyasagar Rao

S/o. Sri Kishan Rao, aged 43 years, Occ: Business,

R/o.6-5-241/3, Shop No.4, Gandhi Road,

Karimnagar & another .. Petitioners

AND

The A.P. State Civil Supplies Corporation Limited,

Rep. by its Vice-Chairman & Managing Director,

Civil Supplies Bhavan, Somajiguda, Hyderabad

& 3 others. .. Respondent

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

W.P. No.18451 OF 2005

ORDER: (Per Hon'ble Mr. Justice B. Sudershan Reddy)

The petitioners in this writ petition question the action of respondents 1 to 3 in deducting certain amounts from the bills payable to the petitioner firm towards realization of service tax based on the proceedings, dated 06-04-2005.

In this writ petition, the question as to whether any service tax is liable to be paid is not in issue. The question raised is as to who is liable to pay the service tax i.e. whether the petitioner firm or respondents 1 to 3.

Sri G. Vijaya Kumar, learned counsel for the petitioners, submits that respondents 1 to 3 in highhanded and arbitrary manner deducted certain amounts from the bills payable to the petitioner firm in purported exercise of the power under Clause 18 of the terms and conditions of the agreement entered into by and between the parties. The said agreement dated 11-08-2004 is entered into by the A.P. State Civil Supplies Corporation Limited (for short 'Corporation') and the petitioner firm. Admittedly, the petitioner firm is a contractor which undertook to transport the food-grains, pulses etc., from various places within the District and outside the District of Karimnagar to various places within the same District or outside the District, but within the State.

Learned counsel submits that Clause 18 of the agreement, "*the contractor shall be bound by all laws, Orders, etc., in force or issued by the central or State Government from time to time and shall be solely liable for any penal consequences that may arise due to violation by the contractor of any law, order, etc., in force",* does not confer any authority, as such, upon respondents 1 to 3 to realize or deduct any amounts, whatsoever, towards service tax from the bills payable to the petitioner firm.

That a copy of the agreement entered into by and between the parties is made available for our perusal. It is a contract entered into between the petitioner firm and the Corporation subject to certain terms and conditions incorporated in the agreement, which are mutually and voluntarily agreed to between the parties. It is a pure and simple commercial contract entered into between the parties on agreed terms and conditions. There is no element of statutory flavour, as such, involved in any of the terms and conditions of the agreement. Clause 23 of the very same agreement in detail provides for resolution of the disputes,
if any, that arise between the parties out of the contract by way of arbitration. There is not even a whisper in the affidavit filed in support of the writ petition as to why the petitioner firm could not avail that remedy available to it under the very same agreement. Learned counsel for the petitioners, however, submits that Corporation is an instrumentality of the State and cannot be permitted to act in any arbitrary manner and unilaterally deduct the amounts from the bills payable to the petitioner firm towards payment of service tax to the 4th respondent. The jurisdiction of the Court to interfere in appropriate places is altogether different from the Court exercising its jurisdiction in a given case. There is a right remedy provided under the very agreement whereunder the dispute between the petitioner firm and the Corporation can as well be effectively resolved by way of arbitration.
Further, respondents 1 to 3 have already deducted the amounts from the bills payable to the petitioner firm.
Any interference, at this stage, by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India may amount to granting a valid decree, which is normally not done by this Court in a judicial review proceedings.

For the aforesaid reasons, we are not inclined to interfere in the matter. The Writ Petition fails and the same shall accordingly stand dismissed without any order as to costs.

However, this order shall not preclude the petitioner firm from availing such remedies as may be available to it in law and the same shall be considered by the competent authority uninfluenced by the observations, if any, made in this

order.

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B. SUDERSHAN REDDY, J

Date:23-08-2005.

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RAMESH RANGANATHAN, J

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